IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 249 OF 2004

Subhasg Devendrappa Aland. ... Appellant.

Versus.

Dhulappa Krishnat Dhayagode. ... Respondent.

Shri Surel S.Shah for the Appellant.

Shri S.D.Thokade for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 9th March, 2005.

P.C.:

1. The Appeal is filed by the unsuccessful Plaintiff in a suit for specific performance. The Courts below have recorded a finding of fact that the Appellant/ Plaintiff was not ready and willing to perform his part of the contract. The said finding is based on the contention of the Appellant/Plaintiff that though the agreed consideration mentioned in the said agreement is Rs.1,02,500/-, he offered to pay only a sum of Rs.60,000/-.

2. Grant of specific performance of an agreement is a discretionary relief under section 20 of the Specific Relief Act, 1963. The exercise of the discretion by the Courts below cannot faulted. No substantial question of law arises. The Second Appeal is dismissed with no order as to costs.

3. By order dated 11th February 2005, I had called for the explanation of the office regarding delay in dispatch of notices by this Court. The explanation of the office is that the work of issuing notice in due and regular matters is given only to one clerk due to lack of availability of adequate staff and that is the reason for the delay. The explanation is accepted.

4. It is to be noted here that in many Second Appeals and Appeals from Order, I have noticed that notices are dispatched just two or three days before the returnable date. Notices are dispatched knowing fully well that the Courts to which notices are sent will not have sufficient time to serve the notice. Whenever the office finds that time for service is short, the exercise of sending notices is uncalled for and the same is nothing but waste of money and time. In a case where the office finds that there is a delay in dispatch of notice, and time remaining for effecting service is not sufficient, the office should place the matter before the concerned Court and obtain order reqarding extension of the returnable date. With these directions, the explanation of the office is accepted.

5. Copies of this order be forwarded to the Registrar General and the Registrar (Judicial) of this Court.

Judge.